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PERSPECTIVE

Employers subject to stricter religious accommodation standard under Title VII

By Tal Burnovski Yeyni

What should employers do when employees ask for specific days off each week for religious observance reasons? As with every request for accommodations, the first step is to engage in a dialogue with the employee to determine what accommodations can be provided.

While a discussion is required, there is no obligation to provide an accommodation that would create an "undue hardship." But what does "undue hardship" mean? This is where the California Fair Employment and Housing Act ("FEHA") and the federal Title VII differed. Until last week.

Under FEHA, undue hardship means "an action requiring *significant* difficulty or expense," considering in part the nature and cost of the accommodation, the overall financial resources of the employer, or the type of operations. Cal. Gov't Code § 12926(u). But under Title VII, the standard used to determine "undue hardship" was effort or cost that was "more than...*de minimis*."

This changed on June 29 with the U.S. Supreme Court's ruling in *Groff v. DeJoy*, 2023 U.S. LEXIS 2790, which adopted the "substantial" standard to determine "undue hardship."

Plaintiff Gerald Groff was an Evangelical Christian who believed that Sunday should be devoted to worship and rest. In 2012, Groff took a mail delivery job with the United States Postal Service, a position that did not involve Sunday work.

This later changed when USPS agreed to begin facilitating Sunday deliveries for Amazon. Groff was told that he would be required to work on Sundays, which prompted him to transfer to a small rural USPS station (with only seven employees) that at the time of the transfer, did not make Sunday deliveries. But a few months later, Sunday deliveries from the smaller USPS station began as well.

As Groff was unwilling to work on Sundays, USPS made other arrangements and allocated his would-be Sunday deliveries to the rest of the staff, including the postmaster, whose job did not generally involve delivering the mail. Throughout this time Groff received several disciplinary notices for failing to work on Sundays. Groff eventually decided to resign in January 2019.

A few months after his resignation, Groff sued USPS for failure to accommodate his Sunday Sabbath practice. The District Court granted summary judgment to USPS, and the Third Circuit affirmed.

In its ruling, the Third Circuit noted it was bound by a previous ruling (*TWA v. Hardison*, 432 U.S. 63) which "held that requiring an employer 'to bear more than a de minimis cost' to provide a religious accommodation is an undue hardship." *Groff v. Dejoy*, 35 F.4th 162, 174.

The Third Circuit concluded that "exempting Groff from working on Sundays caused more than a *de minimis* cost on USPS because it actually imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale." *Groff*, 35 F.4th at 175.

On review before the Supreme Court, SCOTUS disagreed with the application of the "*de minimis*" standard to determine undue hardship, and implied that it was taken out of context.

This standard, per SCOTUS, "blessed the denial of even minor accommodation in many cases, making it harder for members of minority faiths to enter the job market." *Groff v. DeJoy*, 2023 U.S. LEXIS 2790, *25. SCOTUS, therefore, held that the "*de minimis*" standard was not the correct standard to establish "undue hardship" under Title VII. Rather, "'undue hardship' is shown when a burden is substantial in the overall context of an employer's business." *Groff v. DeJoy*, 2023 U.S. LEXIS 2790, *28

The SCOTUS ruling, therefore, requires employers who claim undue hardship to show that the requested accommodation "would result in substantial increased costs in relation to the conduct of [the employer's] particular business." *Groff v. DeJoy*, 2023 U.S. LEXIS 2790, *32.

In a concurring decision Justice Sonia Sotomayor added that undue hardship is not limited to the "business" but "may include undue hardship on the business's employees," reasoning that "for many businesses, labor is more important to the conduct of the business than any other factor." *Groff v. DeJoy*, 2023 U.S. LEXIS 2790, *39.

It remains to be seen how the Equal Employment Opportunities Commission (EEOC) would expand on the *Groff* ruling (if at all).

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While the *Groff* decision constitutes a big change for Title VII religious accommodation claims, California laws and rules remain unchanged. California employers faced with a religious accommodation request are subject to a high bar to claim undue hardship, which requires "*significant* difficulty or expenses." Cal. Gov't Code § 12926(u). As part of that analysis, employers subject to FEHA must consider in part the size, type of operations, or the employer's financial resources when determining undue hardship.

FEHA regulations further suggest the following factors should be considered when determining undue hardship: Composition and structure of the workforce, nature and cost of the accommodations involved, reasonable notice of the need for the accommodation, or any available reasonable alternative means of accommodation. 2 CCR § 11062(b).

As with many employer legal challenges, there is no "one size fits all" solution. Any requests for accommodation require its own analysis, review, and separate determination. Communication and documentation are key in addressing claims, requests, and concerns in the workplace.